UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

WILLIAM SILVERSTEIN, an individual Plaintiff, v. EXPERIENCED INTERNET.COM, INC., et al., Defendants.	Case No.: C 05-0160 PVT **ORDER DENYING MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION**

On July 21, 2005, Plaintiff filed a motion for leave to file a motion for reconsideration.[1] Defendants opposed the motion,[2] and Plaintiff filed a reply. Having reviewed the papers submitted by the parties, the court finds it appropriate to rule on the motion without oral argument. Based on the briefs and arguments presented,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to file a motion for reconsideration is DENIED.

Civil Local Rule 7-9 requires a party moving for leave to file a motion for reconsideration to show:

> (1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is

[1] The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

[2] Under Civil Local Rule 7-9(d) no response was required.

> sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or
>
> (2) The emergence of new material facts or a change of law occurring after the time of such order; or
>
> (3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

Plaintiff submits additional and/or purportedly "new" evidence in the form of various catalog pages and internet pages related to www.sexsearch.com. None of the purported evidence is material to a determination of whether the court has personal jurisdiction over Defendants, because Plaintiff never rebutted Defendants' showing that they do not operate www.sexsearch.com.[3] Thus, the additional evidence does not warrant leave to move for reconsideration.

Plaintiff also argues that the court's ruling was erroneous because it "shifted" the burden to Plaintiff. However, when a defendant moves to dismiss a complaint for lack of personal jurisdiction pursuant to Rule 12(b)(2),[4] the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *See Schwarzenegger v. Fred*

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[3] Plaintiff also has not shown that "in the exercise of reasonable diligence [he] did not know such fact or law at the time of the interlocutory order."

[4] Plaintiff appears to argue that the court should have applied the standard for ruling on a motion under Rule 12(b)(6) (failure to state a claim upon which relief can be granted) to a motion under Rule 12(b)(2) (lack of jurisdiction over the person). Plaintiff cites no case where a court has done so.

Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Plaintiff failed to carry that burden, and thus dismissal was required. Because Plaintiff has not shown that the court failed to consider dispositive legal arguments, leave to move for reconsideration is not warranted.

Dated: *8/25/05*

/s/ Patricia V. Trumbull .
PATRICIA V. TRUMBULL
United States Magistrate Judge